



March 21, 2001

Mr. Thomas E. Shute  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2001-1112

Dear Mr. Shute:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145156.

The City of San Antonio (the "city") received a request for the floor plans for buildings at three street addresses. The city takes no position as to whether any of the requested information is excepted from required public disclosure. The city believes, however, that the requested information may implicate the proprietary interests of private parties. Pursuant to section 552.305 of the Government Code, the city notified four entities, Development Enterprise, LTD., Embry Investments, Embry Partners, LTD., and Woodstone Embry, LTD., of the request for information and of the parties' right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request [for information]." Section 552.301(e)(1)(D) provides that "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as

*provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” (Emphasis added.)*

You failed to demonstrate that the city asked for this decision not later than 10 business days after the date of the city’s receipt of the request for information, as required by section 552.301(b). You also failed to submit the requested information or representative samples of that information to this office, as required by section 552.301(e)(1)(D). Therefore, under section 552.302, the requested information is presumed to be subject to required disclosure and must be released, unless there is a compelling reason to withhold any of the information from the public. As a general rule, the operation of section 552.302 can be overcome by a demonstration that the information at issue is deemed to be confidential under some other source of law or that privacy or proprietary interests of third parties are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 (1982).

None of the private entities that the city notified under section 552.305 has submitted any arguments to this office as to why the requested information should not be released. *See* Gov’t Code § 552.305(d) (providing that private party may submit written comments to attorney general not later than 10 business days after receiving notice under section 552.305). You inform us that the private entities “have indicated that they do not wish the plans disclosed.” But the Public Information Act does not permit information to be withheld from public disclosure simply because the party that submitted the information anticipates or requests confidentiality. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 479 at 1 (1987). And in the absence of the requested information, this office has no means of determining whether any compelling reason exists to withhold any of that information from the public. Therefore, the city must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

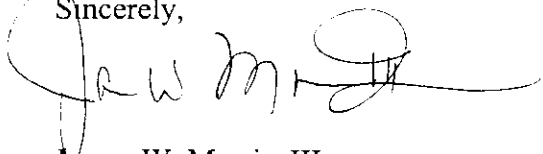
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 145156

cc: Mr. Bob Pierce, Project Manager  
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San Antonio, Texas 78238-3542

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750 East Mulberry  
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Embry Investments  
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Embry Partners, LTD.  
1100 N.E. Loop 410  
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